IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2007

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRP.NPD.No.917 OF 2003 & CMP.No.9517/2003

1.Ramasamy Reddiar
2.Venu
3.Bangaru Ammal .. Petitioners/Defendants/Respondents

Vs

Ponnusamy Reddiar .. Respondent/Plaintiff/Petitioner

Petition filed against the fair and decreetal order of the learned District Munsif Court at Perambalur dated 20.03.2003 in I.A.No.1354 of 1995 in O.S.No.381 of 1996.

For Petitioners: Mr.S.Parthasarathy, Sr. Counsel
for M/s.Sarvabhauman Associates
For Respondent : Mr.Balasubramanian

ORDER

The civil revision petitioners are the defendants in the suit in O.S.No.381 of 1995 on the file of the District Munsif Court, Perambalur. The respondent herein is the plaintiff. The respondent/plaintiff filed an interlocutory application in I.A.No.1354/1995 before the Lower Court praying for passing of final decree by means of appointing an Advocate Commissioner under Order XXVI Rule 13 CPC. On 23.11.1951, a preliminary decree was passed between the parties. In the said interlocutory application, the respondent/plaintiff/petitioner has prayed for his separate share of 1/4 in the application properties to be allotted to him.

2.A.S.No.174 of 1960 filed against the judgment and decree passed in O.S.No.146/1958 by the learned Sub Judge, Thiruchirappalli, was dismissed as withdrawn by this Court on 19.09.1963. In I.A.No.1354/1995 filed before the lower Court by the respondent/plaintiff/petitioner, it is specifically stated that it is gross lie to allot that as though A.S.No.174/1960 on the file of this Court was compromised by allotting certain properties to him and the same was said to have been delivered on payment of Rs.300/- to him etc.

3.It is relevant to point out that the respondent/plaintiff/petitioner in his affidavit in I.A.No.1354/1995

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has categorically averred that he has not engaged any advocate at High Court nor he has endorsed any compromise to be recorded by the High Court and that the fact remains that after the preliminary decree, the properties were not divided by metes and bounds as per terms of the preliminary decree and in filing final decree application, there is no time limit prescribed and since item Nos.10 and 11 of 'B' Schedule have already been sold, no relief is prayed for against those items and therefore, prayed for dividing the application mentioned properties into four shares by metes and bounds and for allotment of 1/4 share.

4.In the counter filed to the I.A.No.1354/1995, it is specifically averred that after the passing of the decree by the Sub Court, Tiruchirappalli and during the pendancy of the appeal in High Court, a panchayat was held between the parties Ponnusamy Reddiar, Sadhasivam of Thirani, Ramasami Reddiar, Village Karnam of Thirani acted as panchayatdars and that Sadhasivam was the Village Munsif and that the panchayat was held in Chithirai, 1960 and it was decided by the panchayatdars that the plaintiff must be given one acre of land in S.F.206/2 and cash of Rs.300/- towards means profit and that panchayat decision was accepted by the parties and accordingly, the plaintiff was given exclusive possession of one acre in S.F.206/2 of Thirani village and and later a sum of Rs.300/- was paid on 02.07.1960 and for the said payment a receipt was given by the plaintiff which was attested by the panchayatdars, viz., Ponnusamy Reddiar, Sadhasivam and Ramasami and in pursuance of the panchayat and acceptance thereof, the petitioner/plaintiff was given exclusive possession of one acre of land and originally Survey No.206/2 consists of one acre 98 cents and after the panchayat, to have separate patta in the name of the plaintiff was subdivided in U.D.R. Proceedings as 206/2B patta was given and he was paying the kist and was in exclusive possession of the property etc.

5.It was further alleged that in regard to the remaining lands, patta stood in the name of Ramasami, the first petitioner/first respondent before the Lower Court and he was paying kist and by mutual arrangement a partition was effected between the parties which was accepted by them and the same came into force and therefore the respondent/plaintiff/petitioner was not entitled to seek the relief of passing of final decree, since the partition was already effected.

6.The delay of 32 years in filing the final decree application is raised as one of the grounds in this civil revision petition by the revision petitioners/defendants/respondents.

7.It is the case of the revision petitioners that by mutual consent, the partition was effected and as such, interlocutory application praying for passing of final decree will not lie before the Trial Court.

8.According to learned counsel for the revision petitioners that the order of the learned District Munsif in I.A.No.1354/1995 dated

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20.03.2003 is illegal because of the fact that the application for filing decree is not maintainable, since the same was filed after 32 years of passing of the preliminary decree. It is also the case of the revision petitioners/defendants/respondents that the Court below after having accepted the evidence of DW.2 who was the witness to earlier panchayat between the parties ought to have dismissed the application and that in view of the earlier compromise before this Court, the application for final decree is not maintainable.

9.Learned counsel for the respondent/plaintiff/petitioner contends that the application in I.A.No.1354/1995 praying for passing of the final decree is maintainable in law, since no time limit is prescribed for filing final decree application. The learned District Munsif while allowing the application for appointment of Commissioner has appointed out through R.Manivannan, advocate fixing the remuneration at Rs.1,500/- to be paid to him directly and that a direction was issued to the Commissioner to allot one acre to the revision petitioners herein in view of the sale of the first item of property.

10.It cannot be gainsaid that there are cases in between the parties from 1958. The Trial Court has not accepted the case of compromise before the High Court. Further, it transpires that the appeal in A.S.No.174/1960 was 'dismissed as withdrawn' on 19.09.1963 as borne out by records. When the appeal in A.S.No.174/1960 was dismissed as withdrawn on 19.09.1963, there is no indication of any compromise arrived at between the parties as seen from the said judgment. The parties interse are co-owners cannot be denied by any stretch of imagination.

11.In AIR 2002 KARNATAKA 439 between A.P.MADANNA [deceased] BY L.RS. VS. A.P.KUSHALAPPA AND OTHERS, it is observed as follows:-

> "Registration Act [16 of 1908], S.23 - Civil P.C. [5 of 1908], O.20, R.18[2] - Registration of decree - Limitation - Partition Suit - Preliminary decree drawn up to 08.04.1999 in terms of compromise entered into between parties - Parties presenting stamp paper commensurate to value of properties falling to their share - Final decree engrossed on said stamp papers on 07.12.2000 - Executable final decree comes into existence on 07.12.2000 - Presentation of decree on 22.12.2000 for registration is within limitation period of 4 months from passing of decree - Registration is valid."

12.In AIR 1989 KERALA 289 AT PAGE 290 between LAXMI AND OTHERS V. SANKAPPA ALWA AND OTHERS, it is held as follows:-

> "[A]Civil P.C. [1908], Ss.11, 97 and O.20, respondent.18 - Suit for partition - Preliminary decree passed - Matters decided by decree are final

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and conclusive – Decision is final – Principle of res judicate applies.

[B]Civil P.C. [1908], Ss.11 and O.20, R.18 – suit for partition – Preliminary decree passed – Application for drawing up final decree – It is not one under Limitation At – Provisions of that Act do not apply."

13.In AIR 1991 MADRAS 307 between MURUGAN Vs. CHIDAMBRAM PILLAI AND OTHERS, it is observed as follows:

[B]Civil P.C. [1908], O.20, R.18 – Partition suit – Preliminary decree – Execution – conditional clause of payment in preliminary decree for giving possession of plaintiff's share in property – Not independently executable as final decree till partition of property – Delayed application for passing final decree in terms of preliminary decree – Not barred."

14.In ILR 1967 [1] MADRAS 136 between MURUGAN Vs. CHIDAMBRAM PILLAI AND OTHERS, it is observed as follows:

[B]Decree for partition by compromise of parties, providing that parties take delivery of properties allotted in execution – One party applying for passing of final decree by appointment of Commensurate – Propriety – One of parties taking possession outside Court – In such case there need be no final decree proceeding – Court should enquire nito such allegation."

15.In a partition suit, there is no limitation for filing final decree application and any number of final decree applications can be filed until the suit is finally disposed of in the considered opinion of this Court. More over, as far as the present case is concerned, the Trial Court has not accepted the plea of village panchayat compromise and therefore, the appeal in A.S.No.174/1960 was not pressed before the High Court. As a matter of fact, Ex.R.7, the receipt dated 02.07.1970 given by the respondent/plaintiff/petitioner in favour of the first revision petitioner/first defendant/first respondent indicates that a sum of Rs.300/- was paid only towards ***mesne*** profits as claimed in O.S.No.146/1958 on the file of Sub Court, Tiruchirappalli. Though RW.2, Ponnusamy, in his evidence has deposed that he was present at the time of panchayat and that he further stated that one acre land and Rs.300/- was given to the respondent/plaintiff/petitioner, the same is belied by Ex.R.7-the receipt, which only speaks for the receipt of Rs.300/- towards ***mesne*** profit.

16.Learned counsel for the revision petitioners brought to the notice of this Court that Ex.R.3, the certified copy of the sale deed dated 16.05.1995 speaks of the respondent/plaintiff/petitioner selling

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properties mentioned in the said document for Rs.19,000/- being the sale consideration and this can be taken note of by the Commissioner appointed by the Trial Court in the final decree application.

17.Looking at from any angle, this court is of the considered view that the interlocutory application in I.A.No.1354/1995 filed by the respondent/plaintiff/petitioner for appointment of Commissioner is maintainable in law even though the same was filed after 32 years and since there is no limitation for filing the final decree application in law and inasmuch as the Court below has passed a considered order on 20.03.2003 in allowing the said application and appointing a Commissioner and giving direction to the Commissioner as stated therein, this Court sitting in revision, comes to the inevitable conclusion that the order passed by the learned District Munsif, Perambalur in I.A.No.1354/1995 in O.S.No.381/95 dated 20.03.2003 does not suffer from any illegality or infirmity and consequently, the same is confirmed.

18.The civil revision petition is dismissed confirming the order of the Trial Court, to meet the ends of justice. However, there shall be no order as to costs. Consequently connected miscellaneous petition is also dismissed.

Ap

Sd/-
Asst. Registrar.
Dated : 06.12.2007

Corrected order to be issued

Sd/-
Asst. Registrar
Dated : 24.01.2008

/true copy/

Sub Asst. Registrar.

To

The District Munsif, |To be substituted to the order already
Permabalur. |despatched on 19.01.2007.

1 cc to M/s.Sarvabhauman Association, Advocate, SR.71312
1 cc to Mr.S.Balasubramanian, Advocate, SR.71147

sj (co)
dv/7.12.

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RVL 25.01.2008

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